

MT LEGISLATIVE HISTORY

Chapter 561 1987

Bill (H) 772 S _____

Original bill & hist. ✓ C

H. Committee on Business & Labor

S. Committee on Labor & Employment

Hearing Date(s) FEB 18 ✓ C

Hearing Date(s) MAR 24 ✓ C

_____ C

MAR 26 ✓ C

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_____ C

_____ C

Date Out FEB 18 ✓ C

MAR 26 ✓ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

STATUS SHEET

50th LEGISLATIVE SESSION

BUSINESS AND LABOR

COMMITTEE

HOUSE BILL NUMBER	ENTERED COM. DATE	DATE CON- SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON- CURRED IN DATE	BE NOT CON- CURRED IN DATE	BE CON- CURRED IN AMENDED DATE	BE NOT CONCURR- IN AS AMENDED DATE
699	2/13/87	2/17/87	2/17/87			2/17/87					
719	2/13/87	2/17/87	tabled 2/17/87								
723	2/13/87	2/17/87	tabled 2/17/87								
727	2/13/87	2/16/87	2/16/87			2/16/87					
728	2/13/87	2/17/87	tabled 2/17/87								
763	2/16/87	2/18/87	tabled 2/18/87								
765	2/16/87	2/18/87	2/18/87	2/18/87							
769	2/16/87	2/18/87	2/18/87			2/18/87					
771	2/16/87	2/18/87	2/18/87	2/18/87							
772	2/16/87	2/18/87	2/18/87			2/18/87					
784	2/17/87	2/19/87	2/19/87			2/19/87					
789	2/17/87	2/19/87	2/24/87			2/24/87					
796	2/17/87	2/19/87	2/19/87	2/19/87							
799	2/18/87	2/19/87	tabled 2/19/87								

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

HOUSE BILL NO. 772

INTRODUCED BY BRANDEWIE, GLASER, DRISCOLL

IN THE HOUSE

FEBRUARY 14, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & LABOR.
FEBRUARY 18, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 19, 1987	PRINTING REPORT.
FEBRUARY 20, 1987	SECOND READING, DO PASS.
FEBRUARY 21, 1987	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 91; NOES, 1.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 23, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
MARCH 27, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 30, 1987	SECOND READING, CONCURRED IN.
	ON MOTION, RULES SUSPENDED AND BILL PLACED ON THIRD READING THIS DAY.
	THIRD READING, CONCURRED IN. AYES, 29; NOES, 21.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 8, 1987

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 9, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 HOUSE BILL NO. 772
 2 INTRODUCED BY Don Lewis to E. Ben Davis

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PREVAILING
 5 WAGE RATE LAWS; PROVIDING FOR THE CREATION OF PREVAILING
 6 WAGE RATE DISTRICTS; DEFINING STANDARD PREVAILING WAGE RATE
 7 AS THE WEIGHTED AVERAGE WAGE RATE IN A DISTRICT; DEFINING
 8 "HEAVY/HIGHWAY WAGE RATE" AND "WORK OF A SIMILAR CHARACTER";
 9 AND AMENDING SECTIONS 18-2-401 AND 18-2-402, MCA."

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 NEW SECTION. Section 1. Creation of prevailing wage
 13 rate districts. (1) Without taking into consideration
 14 heavy/highway wage rates, the commissioner shall divide the
 15 state into at least 10 prevailing wage rate districts.

16 (2) In initially determining the districts, the
 17 commissioner must:

18 (a) follow the rulemaking procedures in the Montana
 19 Administrative Procedure Act; and

20 (b) publish the reasons supporting the creation of
 21 each district.

22 (3) A district boundary may not be changed except for
 23 good cause and in accordance with the rulemaking procedures
 24 in the Montana Administrative Procedure Act.

25 (4) The presence of collective bargaining agreements

1 in a particular area may not be the sole basis for the
 2 creation of boundaries of a district, nor may the absence of
 3 collective bargaining agreements in a particular area be the
 4 sole basis for changing the boundaries of a district.

5 Section 2. Section 18-2-401, MCA, is amended to read:

6 "18-2-401. Definitions. Unless the context requires
 7 otherwise, in this part the following definitions apply:

8 (1) "Labor" is hereby defined to be all services in
 9 excess of \$25,000 performed in the construction, ~~repair~~,--or
 10 maintenance, or remodeling of in all state, county,
 11 municipal, and school work and does not include engineering,
 12 superintendence, management, or office or clerical work.

13 (2) "Commissioner" means the commissioner of labor and
 14 industry provided for in 2-15-1701.

15 (3) "Department" means the department of labor and
 16 industry provided for in 2-15-1701.

17 (4) A "bona fide resident of Montana" is hereby
 18 declared to be a person who, at the time of his employment
 19 and immediately prior thereto, has lived in this state in
 20 such a manner and for such time as is sufficient to clearly
 21 justify the conclusion that his past habitation in this
 22 state has been coupled with intention to make it his home.
 23 Sojourners or persons who come to Montana solely in
 24 pursuance of any contract or agreement to perform such labor
 25 shall under no circumstance be deemed to be bona fide

1 residents of Montana within the meaning and for the purpose
2 of this part.

3 (5) "Heavy/highway wage rates" means wage rates
4 determined and established statewide for projects such as
5 alteration or repair of roads, streets, highways, alleys,
6 runways, trails, parking areas, or utility rights-of-way.

7 ~~{5}~~(6) (a) "Standard prevailing rate of wages,
8 including fringe benefits for health and welfare and pension
9 contributions and travel allowance provisions applicable to
10 the ~~county--or--locality~~ district in which the work is being
11 performed," means those wages, other than heavy/highway
12 wages, including fringe benefits for health and welfare and
13 pension contributions and travel allowance provisions, which
14 are paid in the ~~county--or--locality~~ district by other
15 contractors for work of a similar character performed in
16 that ~~county---or---locality~~ district by each craft,
17 classification, or type of worker needed to complete a
18 contract under this part. The standard prevailing rate of
19 wages is a weighted average wage rate based on all of the
20 hours worked on work of a similar character performed in the
21 district.

22 (b) When work of a similar character is not being
23 performed in the ~~county--or--locality~~ district, the standard
24 prevailing rate of wages, including fringe benefits for
25 health and welfare and pension contributions and travel

1 allowance provisions, shall be those rates established by
2 collective bargaining agreements in effect in the ~~county-or~~
3 ~~locality~~ district for each craft, classification, or type of
4 worker needed to complete the contract.

5 (7) "Work of a similar character" means work on
6 private or commercial projects as well as work on public
7 projects."

8 Section 3. Section 18-2-402, MCA, is amended to read:

9 "18-2-402. Standard prevailing rate of wages. (1) The
10 Montana commissioner of labor may determine the standard
11 prevailing rate of wages in the ~~county-or--locality~~ district
12 in which the contract is to be performed. The commissioner
13 shall undertake to keep and maintain copies of collective
14 bargaining agreements and other information ~~from-which-rates~~
15 ~~and--jurisdictional--areas--applicable---to---public---works~~
16 ~~contracts--under--this--part-may-be-ascertained on which the~~
17 rates for a district are based.

18 (2) The provisions of this part do not apply in those
19 instances where the standard prevailing rate of wages is
20 determined pursuant to federal law.

21 (3) In no instances where this part is applicable
22 shall the standard prevailing rate of wage be determined to
23 be greater than the applicable rate of wage in the area for
24 the particular work in question as negotiated under existing
25 and current collective bargaining agreements."

1 NEW SECTION. Section 4. Codification instruction.
2 Section 1 is intended to be codified as an integral part of
3 Title 18, chapter 2, part 4, and the provisions of Title 18,
4 chapter 2, part 4, apply to section 1.

5 NEW SECTION. Section 5. Extension of authority. Any
6 existing authority of the commissioner of labor and industry
7 to make rules on the subject of the provisions of this act
8 is extended to the provisions of this act.

-End-

MINUTES OF THE MEETING
BUSINESS AND LABOR COMMITTEE
50TH LEGISLATIVE SESSION

February 18, 1987

The meeting of the Business and Labor Committee was called to order by Chairman Les Kitselman on February 18, 1987 at 8:00 a.m. in Room 312-F of the State Capitol.

ROLL CALL: All members were present.

HOUSE BILL NO. 769 - Continuous Certificates For Certain Insurers, sponsored by Rep. John Patterson, House District No. 97, Yellowstone County. Rep. Patterson stated this bill was at the request of the State Auditor. He commented the bill provides that certificates of authority for farm mutual insurers, benevolent associations, and fraternal benefit societies be continuous rather than annually renewable. He explained that under current law the certificates are only valid for one year and then expire. He said the procedure results in a considerable amount of paper work for the State Auditor's office each year.

PROPOSERS

Jim Borchardt, chief examiner, Montana Insurance Department, State Auditor's Office. Mr. Borchardt presented a certificate as an example of what was necessary for 39 different associations. He said the department would prefer to issue one certificate and then have the association pay the fees rather than reissue it. He submitted proposed amendments by the State Auditor's Office. Exhibit No. 1.

OPPOSERS

None.

QUESTIONS

None.

CLOSING

Rep. Patterson made no further comments.

HOUSE BILL NO 771 - Revise Surplus Lines Insurance Laws, sponsored by Rep. William Glaser, House District No. 98, Lockwood. Rep. Glaser stated this bill was at the request of the State Auditor's Office.

bar owners. Rep. Pavlovich said that it was a state statute that the serving of liquor had to be stopped after 2:00 a.m.

There were further questions regarding the definition of a casino. Rep. Addy said a casino was a premise offering authorized card games on a 24 hour basis. He suggested tightening up the definition by defining premises as those offering authorized card games between the hours of 2:00 a.m. and 8:00 a.m.

Rep. Wallin asked if this was allowing the casinos legal status with a certificate. Rep. Addy said the bill is giving the local gambling commission authority to regulate them. He said the license can be revoked. He clarified that slot machines, crap games, and roulette was not authorized by Montana law in any establishment.

Rep. Swysgood asked about the fee that is established and whether it was open ended. Rep. Addy replied that it was open ended.

Rep. Bachini asked if a time should be stated in the bill similar to a regular bar. Rep. Addy said that by stating an establishment is authorized card games between the hours of 2:00 a.m. and 8:00 a.m. would make it easier to regulate anyone that stays open during those hours.

Rep. Simon asked about the definition addressing card games. He said that keno and video poker were not card games, and suggested expanding the definition to consider games of chance. Rep. Addy responded that video poker and the electronic keno machines could be included in the definition. Chairman Kitselman commented that the card games are limited in the definition and are restricted to certain card games.

Rep. Simon asked about the license to establish rules of operation with limitation on hours by the town council. Rep. Addy said the authority to license gives the authority of imposing conditions on the license.

CLOSING

Rep. Addy made no further comments.

HOUSE BILL NO. 772 - Revise Prevailing Wage Rate Laws, sponsored by Rep. Ray Brandewie, House District 49, Bigfork. Rep. Brandewie explained that the state is divided into five districts for the purposes of determining the prevailing wages. He said the bill mandates ten districts which allows the Northeast corner of the state, that feel that the wages in other areas are not reflective of their area, to have their own area. He commented that where unions are strong they could keep their prevailing wage principally around the

major cities in the state. He added that the bill defines the prevailing wage rate.

PROPONENTS

Gene Fenderson, representing the Montana State Building Construction Trades Council. Mr. Fenderson spoke in support of the bill. He said the bill would answer the concerns of a lot of people in the state.

Stuart Doggett, Montana Chamber of Commerce. Mr. Doggett stated they support the bill.

OPPONENTS

None.

QUESTIONS

Rep. Grinde asked for an explanation on how the average wage rates were determined. Rep. Brandewie responded the Department of Labor has only been looking at government projects so the prevailing wages have stayed up. He said this bill provides that they have to look at private and commercial projects of similar nature to determine the wage. He added that the Commissioner would have to determine what the districts would be.

Rep. Grinde asked Rep. Brandewie about highway construction jobs. Rep. Brandewie responded that this bill did not address highway construction, it addressed the building construction trade performed in various communities.

Rep. Swysgood asked about the weighted average. Rep. Brandewie responded that this bill would bring the labor costs in line with free enterprise and not heavily weighted in favor of the unions nor weighted against the person that wants to pay less than minimum wage. He said this would reflect the true labor costs in the district.

CLOSING

Rep. Brandewie made no further comments.

EXECUTIVE ACTION

ACTION ON HOUSE BILL NO. 769

Rep. Thomas moved that House Bill No. 769 DO PASS.

Rep. Thomas moved the proposed amendment. The motion carried unanimously.

Rep. Thomas moved that House Bill NO. 769 DO PASS AS AMEND-ED. The motion carried unanimously.

ACTION ON HOUSE BILL NO. 771

Rep. Glaser moved that House Bill No. 771 DO PASS. The motion carried unanimously.

ACTION ON HOUSE BILL NO. 772

Rep. Jones moved that House Bill No. 772 DO PASS.

Rep. Driscoll moved to amend on page 3, line 3, following "means wage rates", insert, "including fringe benefits for health and welfare and pension contributions and travel allowance provisions".

Rep. Brandewie stated they discussed the amendment and it makes it clearer as to what the exemptions are for heavy highway construction.

Rep. Driscoll's motion for the amendment was voted on and the motion carried unanimously.

Rep. Jones moved an amendment to correct the word "wate" to "wage" on page 1, line 14. The motion carried unanimously.

Rep. Wallin asked what Rep. Glaser meant by "at least ten districts" stated in the bill. Rep. Glaser responded that there was concern by the rural areas that they were being tied into the major business centers where traditionally the wages have been higher, so the prevailing wage for the local smaller areas were not typical of that area, so the 10 districts were formed.

Rep. Driscoll commented about wage information surveys sent to contractors. He said if there were any more areas, more people would be needed to disseminate the information.

Rep. Wallin asked why use the term, "at least", why not just say 10, 12 or 15 districts.

Rep. Brandewie said that "at least ten districts" addresses the situation and allows the Commissioner more flexibility. He said "at least ten" forces the commissioner to recognize rural areas. He commented that the "mean" or "average" has never moved on prevailing wages, and now with the weighted average, it will bring wage rates into line with competition.

Chairman Kitselman questioned the \$25,000 limit since most construction projects were between \$50-100 thousand. Rep. Driscoll said the project would have to be put out to bid if it was over \$7,500 in some cases. He said cities and counties all have a different amount.

Rep. Jones moved that House Bill No. 772 DO PASS AS AMENDED. The motion carried with Rep. Swysgood and Rep. Grinde opposed.

HOUSE BILL NO. 765 - Montana Jobs Act, sponsored by Rep. John Vincent, House District 80, Bozeman. Rep. Vincent stated the bill was a statement of purpose, commitment, and promise for a better economic future for Montana. He said the act is designed to progressively promote and develop a strong stable growing and diversified economy for Montana's future. He commented that the Montana Jobs Act is based on the idea that the most important thing that a government can manufacture for its citizens is the opportunity to succeed, and Montana needs more good jobs, and the resources are available. He said that innovation and diversification should be emphasized and the investment of resources is necessary. He said this bill would put this issue on the ballot. He submitted an overview of what the Montana Jobs Act does and a copy of the bill. Exhibit No. 3 and 4.

PROPOSERS

Jim Cook, President, University of Montana. Dr. Cook stated that the equipment assistance that would be provided to the university would be valuable to generate research dollars. He said that the School of Business mentioned in the bill is their largest school, and this would be of major assistance to that school.

Bill Merwin, President, Northern Montana College. Dr. Merwin stated that as Montana's economy evolves, the one essential ingredient behind this will be technology. He said 85% of the jobs in Montana in the next decade will have associated with it some form of technology, and the economy will be based on technology. He commented that middle technology was the application of high technology to business and industrial problems. There are several very creative elements in the bill such as the development of the small business development center, and it is their impression that if they have machinery, equipment and facilities available, that entrepreneurs would be more viable when competing for defense contracting.

Bill Tietz, President, Montana State University, member of the Governor's Committee on Economic Development, and member of Board of Science and Technology. Dr. Tietz stated that

DAILY ROLL CALL

BUSINESS & LABOR

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date FEBRUARY 18, 1987

NAME	PRESENT	ABSENT	EXCUSED
REP. LES KITSELMAN, CHAIRMAN	✓		
REP. FRED THOMAS, VICE-CHAIRMAN	✓		
REP. BOB BACHINI	✓		
REP. RAY BRANDEWIE	✓		
REP. JAN BROWN	✓		
REP. BEN COHEN	✓		
REP. JERRY DRISCOLL	✓		
REP. WILLIAM GLASER	✓		
REP. LARRY GRINDE	✓		
REP. STELLA JEAN HANSEN	✓		
REP. TOM JONES	✓		
REP. LLOYD MCCORMICK	✓		
REP. GERALD NISBET	✓		
REP. BOB PAVLOVICH	✓		
REP. BRUCE SIMON	✓		
REP. CLYDE SMITH	✓		
REP. CHARLES SWYSGOOD	✓		
REP. NORM WALLIN	✓		

STANDING COMMITTEE REPORT

February 18

19 87

BUSINESS AND LABOR

Mr. Speaker: We, the committee on

HOUSE BILL NO. 772

report

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached

REP. LES KITSELMAN

Chairman

AMENDMENTS AS FOLLOWS:

1) Page 1, line 14

Following: "heavy/highway"

Strike: "wate"

Insert: "wage"

2) Page 3, line 3

Following: "means wage rates"

Insert: ", including fringe benefits for health
and welfare and pension contributions and
travel allowance provisions,"

FIRST

WHITE

reading copy ()
color

TESTIMONY ON HOUSE BUSINESS & LABOR COMMITTEE H.B. 772.

My name is Reggie McMurdo and I am the elected Business Manager of Local 768 of the International Brotherhood of Electrical Workers. Our geographical jurisdiction is the seven counties in northwestern Montana, and I live in Whitefish. During this legislative session I am authorized to speak for the Montana State Conference of Electrical Workers, representing over 4,000 members across the state.

Due to a misunderstanding I arrived too late to testify before the committee. My thanks to Chairman Kitselman for allowing this written version to be entered.

Our opposition to H.B. 772 is based on three separate arguments.

- #1 We see no need to create ten (10) separate new wage rate districts. The last legislature required the Commissioner of Labor to create five (5) new wage rate districts, which was accomplished on December 1, 1986. The time and money expended to create these five districts will be totally wasted if they are not allowed any time to operate to see if they work. Additionally, why does the state have to create wage districts at all? Montana, like all state, is already divided into prevailing wage areas by the federal government. During these times of financial crisis it seems extravagant to spend state money re-inventing the wheel.
- #2 The \$25,000 threshold when considering new construction does not appear to be outrageously high. However, when viewed in the nature of renovation or repair of individual components of an existing facility, \$25,000 is devastating. A \$25,000 repair or replacement of electrical or mechanical systems, or roofs or boilers for example, will result in these critical, potentially life and property threatening systems being built by the cheapest employees available. The employer most able to exploit his employees will have a bid advantage, and in all occupations the employees most easily exploited are the least competent. The current threshold of \$7,500 is more than adequate to allow the incidental repair and replacement necessary for the normal operation of state facilities.
- #3 The concept of prevailing wage laws in general has been attacked in this legislature, and in this bill. The logic that created all prevailing wage laws is still valid. Basically, these laws are intended to assure quality construction of public facilities. There is, however, another perspective that deserves mention. Construction wages are set exclusively by the private sector, and move up and down as the market dictates. Prevailing wage laws prevent the enormous purchasing power of the state from being used to pressure these wage rates down. Consider for a moment your feeling about paying taxes if the tax revenue was used by the state to reduce your business opportunities, or your wage rates, and therefore your lifestyle.

I did attend and testify at the hearings on H.B. 119 and S.B. 10. From the testimony given at these two hearings, the only conclusion possible was to leave the existing law intact, or to strengthen it. I am also aware of the communications from constituents to their representatives regarding these two bills. I doubt that the majority of correspondence or phone calls to any representative on the prevailing wage issue indicated a desire to dilute or repeal Montana's Little Davis-Bacon.

Given the logical, provable, expert testimony overwhelmingly opposed to any weakening of Montana's prevailing wage law, and the lopsided communications from the constituents, and the largest demonstration at this legislature to date, further attempts such as H.B. 772 cannot be based on any desire to save money or represent your constituents.

It appears that this issue has become a political football. Partisan politics is not the method best suited to decide prevailing wage laws. Quality construction of public facilities directly affects all segments of society. The legislature itself does its business in a public facility.

There are only two reasons to oppose a strong prevailing wage law:

- #1 Directly affected unfair employers can rip off the public and their employees and thereby make more profit.
- #2 Ignorance.

No one in the legislature can claim ignorance of the facts, or their constituents wishes. I urge you to oppose H.B. 772.

BUSINESS AND LABOR

BILL NO. House Bill No. 772

SPONSOR Rep. Ray Brandewie

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MONTANA LEGISLATIVE COUNCIL BILL STATUS SYSTEM
 FINAL COMMITTEE REPORT OF REFERRED BILLS
 COMMITTEE--(S) LABOR & EMPLOYMENT

PAGE NBR..... 204
 RUN TIME08:32
 RUN DATE.... 04/22/87

CHAIRMAN--SEN. JOHN "J.D." LYNCH
 NORMAL SCHEDULE==> SITE: ROOM 413/415

DAYS: T-T-S

TIME: 1:00 P.M.

SECRETARY--JULIE RADEMACHER

--BILL NO--	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0381	2/12	3/19	03/19/87; 03/26/87	CONCUR AS AMENDED	02/12/87	03/26/87
GRADY, ED			COSMETOLOGISTS' UNEMPLOYMENT AND WORKERS' COMPENSATION COVERAGE			
HB0640	2/17	3/12	03/12/87	CONCUR AS AMENDED	02/17/87	03/12/87
SWIFT, BERNIE			REQUIRE WORKER TO NOTIFY OF INJURY WITHIN 24 HOURS TO CLAIM WORKERS' COMP.			
HB0689	2/21	3/12	03/12/87	CONCUR	02/21/87	03/12/87
SWIFT, BERNIE			WORKERS' COMP. INDEPENDENT CONTRACTOR EXEMPTION EFFECTIVE UNTIL CHANGED			
HB0699	2/23	3/12	03/12/87	CONCUR AS AMENDED	02/23/87	03/12/87
WALLIN, NORM			EXCLUDE OUTSIDE SALESMEN FROM OVERTIME COMPENSATION REQUIREMENTS			
HB0727	2/23	3/19	03/19/87	4/4 tie	02/23/87	
WINSLOW, CAL			EXEMPT LIVE-IN EMPLOYEES FROM MINIMUM WAGE AND OVERTIME LAW			
HB0765	3/03	3/17	03/17/87			
VINCENT, JOHN			MONTANA JOBS ACT			
HB0772	2/23	3/24	03/24/87; 03/26/87	CONCUR AS AMENDED	02/23/87	03/26/87
BRANDEWIE, RAY			REVISE PREVAILING WAGE RATE LAWS			
HB0810	3/02	3/19	03/19/87	CONCUR	03/02/87	03/19/87
HARRINGTON, DAN			PROVIDE HEAD START EMPLOYEES RIGHT TO BARGAIN COLLECTIVELY			
HB0884	4/03	4/07	04/07/87; 04/09/87	CONCUR AS AMENDED	4/04/87	4/09/87
SMITH, CLYDE			PAYROLL TAX TO FUND WORKERS' COMP. PLAN NO. 3; SALE OF BONDS			

MINUTES OF THE MEETING
LABOR AND EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

March 24, 1987

The twenty-first meeting of the Labor and Employment Relations Committee was called to order by Chairman Lynch on March 24, 1987, at 1:00 p.m. in Room 413/415 of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL NO. 302: Rep. Dorothy Bradley, House District 79, sponsor of the bill, stated House Bill 302 is an Agency bill. (See Exhibit 1) Rep. Bradley feels this is an outdated law as the current law requires the establishing of jobs based on the size of the population base in a county seat. She stated this bill will change the standard from population to public convenience and necessity. She explained the current requirement is a population of 1,000 for maintaining an agency. She stated she is not proposing to eliminate those agencies, but to change the standard to public convenience and necessity and also to have a demonstration of public hearing. This would not start an immediate phase-out of Montana agencies. Rep. Bradley stated there was a time when a population base made sense, but times have changed. This bill would create a system that every transportation agency in the United States is currently using. It would be a centralized system which would use an 800 phone number to deal with the work. Rep. Bradley feels the only reason the outdated system is still being used is to maintain a handfull of jobs. The centralized system will be in 5 communities - Great Falls, Missoula, Whitefish, Laurel, and Glendive. Rep. Bradley stated she has received over a dozen letters of support from shippers. She said in other states where this system is in operation already, there seems to be a correlation of lower freight rates. Rep. Bradley stated she has statistics that prove there is no evidence of a correlation between the closure of agencies and the abandonment of branch lines. She stated the current employees are going to be taken care of, they will be offered positions in other areas. Rep. Bradley reserved the right to close.

Rep. Bradley closed by discussing the closure of agencies. (See attached Exhibit 13) Rep. Bradley believes this is a fair bill to everyone involved.

CONSIDERATION OF HOUSE BILL NO. 772: Rep. Raymond Brandewie, House District 49, sponsor of the bill, stated this bill requires there be at least 10 prevailing wage rate districts and at the present time there are 5 districts. Rep. Brandewie does not feel the Little Davis-Bacon Act serves the small communities of Montana. The wages placed upon small communities' construction projects are artificially high because of the involvement with unions. One step taken to try to address the problem is there be 10 prevailing wage rate districts, and also the presence of a collective bargaining agreement. A collective bargaining agreement is not the sole basis for the changing or creating of boundaries. There is also a provision included in the bill for \$25,000 work exemption. The basis for determining the prevailing wage will be from the basis of the weighted average. Rep. Brandewie stated there are some technical amendments that have to be fixed.

PROPOSERS: Mr. Gene Fenderson, representing the Montana State Building and Construction Trades Union, stated they support this bill, with some reluctance. Mr. Fenderson stated this is the fifth hearing he has attended concerning prevailing wage rates this 50th Legislative Session. He said there has been a clear message sent that the Davis-Bacon Act should be updated and reflect more of what is happening in the communities today. The Labor Commissioner set up an Advisory Council to update the Davis-Bacon Act, and Mr. Fenderson was on that council. He said the results of the meeting were that there needs to be a threshold to care for small every-day type jobs and there should be more wage rate districts. In the current law there is a \$7,500 threshold for every-day type repair jobs, and there are 5 wage rate districts. There was a feeling the Labor Commissioner should make some more changes. People involved with labor disagree, but they realize they have to give some to keep the Davis-Bacon law in the statutes. People representing labor worked with Rep. Brandewie and Rep. Driscoll, and the result was this bill. He stated the support given is tied to no amendments to vital issues of this bill.

Mr. Curt Wilson, representing Construction and General Laborers Local 1334, stated there has been much hard work and thought put into this compromise. They support the bill in its original form.

20

Mr. Jerry E. Pottratz, representing the District Council of Laborers, stated they support this bill. They feel the Little Davis-Bacon Act is important to their members as it guarantees a fair living wage and is equally important to the Montana taxpayers because it assures good quality products from good quality craftsmen. He urged the committee to support this bill.

Mr. Robert G. Kukowda, representing the Montana State Council of Carpenters, stated they support House Bill 772.

Mr. John Manzer, representing the Joint Council of Teamsters, Local 2, urged the committee to support this compromised bill. This bill will benefit small communities and school districts, yet still protect the wage scale for the craftsmen in Montana.

Mr. Jim Murry, representing the Montana State AFL-CIO, gave testimony in support of this bill. A copy of his testimony is attached as Exhibit 14.

Mr. Reggie McMurdo, representing Montana Council of Electrical Workers, Local 768 in Kalispell, stated they support this bill. Mr. McMurdo suggested the following items be amended: The \$25,000 threshold is rather low; and there should be a definition of prevailing. He urged support of the committee.

Mr. Len F. Blancher, representing the Operating Engineers, Local 400, urged the committee to support this bill in its original form.

OPPONENTS: Ms. Lorna Frank, representing the Montana Farm Bureau Federation, gave testimony in opposition to this bill. A copy of her testimony is attached as Exhibit 15.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 772: Senator Blaylock asked Mr. Gene Fenderson if it would be possible for construction companies from right-to-work states to bid on Montana jobs, and could this lower the prevailing wage. Mr. Fenderson replied North Dakota contractors coming into Montana have always been a threat. It has been observed Montana rates are too high for small local areas. Currently laborers entering their community have had to take wage cuts to keep the Montana contractors competitive.

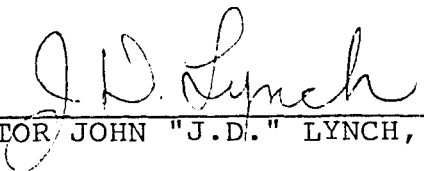
Senator Lynch asked Ms. Frank if she would be opposed to this bill even if Senate Bill 10 fails. Ms. Frank replied yes.

Senator Lynch closed for Rep. Brandewie since he had to return to the House Session.

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LABOR AND EMPLOYMENT
March 24, 1987
Page 7

ADJOURNMENT: There being no further business to come before the committee, the hearing was adjourned at 2:55 p.m.



SENATOR JOHN "J.D." LYNCH, Chairman

jr

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 3/24/87

NAME	PRESENT	ABSENT	EXCUSED
John "J.D." Lynch Chairman	X		
Gene Thayer Vice Chairman	X		
Richard Manning	X		
Thomas Keating	Y		
Chet Blaylock	X		
Delwyn Gage	X		
Jack Haffey	X		
Jack Galt	X		

Each day attach to minutes.



Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARY

ZIP CODE 59624
406/442-1708

TESTIMONY OF JIM MURRY ON HOUSE BILL 772 BEFORE THE SENATE LABOR AND EMPLOYMENT
RELATIONS COMMITTEE, MARCH 24, 1987

Good afternoon. Mr. Chairman, members of the committee, for the record, my name is Jim Murry and I am the Executive Secretary of the Montana State AFL-CIO. We are here today to testify in support of House Bill 772.

Our labor federation has always been an adamant supporter of Montana's prevailing wage law, also known as the Little Davis-Bacon Act. The simple fact is that Little Davis-Bacon is a fair and equitable law. Almost everyone benefits under its provisions except unscrupulous contractors. Workers, fair-minded contractors, and state and local governments all profit from Montana's prevailing wage law. So do taxpayers, Mainstreet businesses and the general public.

Members of the committee, this measure before you today is obviously a compromise measure. It expands the number of prevailing wage districts in Montana, and raises the threshold as to when prevailing wage laws apply. The Montana State AFL-CIO supports this bill, but we will be monitoring it closely over the upcoming years to make sure that it is in the best interests of workers, fair contractors and the taxpaying public.

We urge you to give House Bill 772 a "do pass" recommendation.

SENATE LABOR & EMPLOYMENT
EMERGENCY 14
DATE 3/24/87
BILL NO. HB 772



P.O. Box 6400
~~502 South 19th~~

Bozeman, Montana 59715
Phone (406) 587-3153

TESTIMONY BY: Lorna Frank
BILL # HB-772 DATE March 24, 1987
SUPPORT OPPOSE XXX

Mr. Chairman, members of the committee, for the record, my name is Lorna Frank, representing approximately 3500 Montana Farm Bureau members throughout the state.

Farm Bureau members believe that county and local governments should be exempt from the state prevailing wage law, when only locally generated funds are used, and that the wages should reflect actual conditions in each local community.

We feel HB-772 does not address our members concerns. It may be better than the present law, but it still sets up 10 districts with the rural communities being classified with the larger towns. It defines labor as all services in excess of \$25,000 performed in construction, maintenance, or remodeling in all state, county, municipal, and school work and does not include engineering, superintendence, management, or office or clerical work.

If a county or local government has a bond issue approved by the local taxpayers for a new school it is going to cost a lot more than \$25,000. Why should the landowners be forced to pay more than what the actual conditions in that community are?

Farm Bureau urges this committee to do not pass this bill. Thank you.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 15
DATE 3/24/87
BILL NO. HB 302

SIGNED: Lorna Frank

COMMITTEE ON

Labor

DATE March 24, 1987

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Debra Fause	Private citizen	HB 772	X	
Gerard Ball	Laborer	HB 772	X	
Robert W. Hicke	Laborer	HB 772	X	
Robert H. Kukunda	Nat State Council of Carpenters	HB 772	X	
B. W. Kukunda	Western Ind. B. C.	HB 772	X	
KAY SENGELER	SHEET METAL WORKERS	HB 772		
Jeffrey E. Willis	Laborer	HB 772	X	
John Kelly	Carpenters D.C. NW Mt	HB 772	X	
John Fitzgerald	Pegasus Gold Corp	HB 302	X	
Kay Foster	Begs Chamber of Commerce	HB 302	X	
Alec Hansen	CONRAD, CHOTEAU FORT BENTON DEPTON	HB 302		✓
RICHARD VAN AKEN	BRO. RAILWAY CLERKS	HB 302		X
Ken F. Blanche	Oper. Eng. #400	HB 772	X	
James P. Kardon	USW Local 72	HB 772	X	
Jim Murray	Nat. AFL-CIO	HB 772	X	

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Betty I. Klingler	BRAC - HALFWAY Lodge 42	HB 302		X
James T. Mullar	State Legis Dir BRAC	HB 302		X
JOE BRAND	✓ ✓ ✓ WTC	HB 302		X
KEO WHITE	BRAC - 428	HB 302		X
Joe Shannon	BRAC 528	HB 302		X
Cal Burr JR.	BLE.	HB 302		X
Maureen Stone	Doc	302		X
Wj Rogers	BRAC 402	HB 302		X
Terry Connolly	Mont Farmers Union	HB 302		X
Steve Fennell	St Bldg Trades	HB 772	X	
Cliff Wilk	CTGL 41334	HB 772	X	
Reggie McMurdo	MT. Council of Electrical ^{Workers}	HB 772		X
DAN JONES	MT. ST. Bldg Trades	HB 772	X	
PAULETTE GRONVOLD	MT ST Bldg Trades	HB 772	X	
John Farkas	ST ASSN. OF Plumbers & Fitters	772	X	
John A. Hays	Teamsters Joint Col. F2	772	X	
Michael S. Higgins	St Assn of Plumbers & Fitters	772	X	
John Matheson	MT. St. Bldg Trades	772	X	
Larna Frank	MT. Farm Bureau	302	X	772
Art Biron	B. N. Railroad	302	X	
John B. Palmer	Bx 485 Farmers MT	302	X	
W. L. Barclay	BRAC	302		X
Bill Marguerit	Fisher Industries	302	X	
Kurtis Sparr	Alenacis - Forward	302	X	
John M. Shultz	Hotel Union	302	X	
David E. Peters	District Council of Laborers	HB 772	X	
John J. Thompson	Mont. AF of L	302	X	

MINUTES OF THE MEETING
LABOR AND EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

March 26, 1987

The twenty-second meeting of the Labor and Employment Relations Committee was called to order by Vice Chairman Thayer on March 26, 1987, at 1:00 p.m. in Room 413/415 of the State Capitol.

ROLL CALL: All members were present.

FURTHER CONSIDERATION OF HOUSE BILL NO. 302: Senator Manning submitted amendments for House Bill 302. Mr. Leo Barry representing Burlington Northern Railroad, has no objections with the amendments.

Mr. Jim Mular representing the Brotherhood of Railway & Airline Clerks, has no objections with the amendments.

Senator Blaylock asked Mr. Mular to explain the amendments. Mr. Mular stated it proposes the criteria of maintaining stations on short line purchases. There are 21 agencies and the purchaser would be a successor to the framework of the law on this bill. Senator Blaylock asked Mr. Mular if the southern railway route will remain the same as the Burlington Northern system. Mr. Mular replied yes, it would also be subjected to a hearing process.

DISPOSITION OF HOUSE BILL NO. 302: Senator Manning made a motion that the amendments be adopted. The motion carried unanimously. Senator Blaylock made a motion that House Bill 302 AND AS AMENDED, BE CONCURRED IN. The motion CARRIED 5-3. See attached roll call vote sheet.

FURTHER DISCUSSION OF HOUSE BILL NO. 381:

Senator Blaylock stated the salon owners who are running their place of business and paying Workers' Compensation and unemployment compensation have a point with the fact they are responsible for these payments and that they only own the building. Senator Blaylock does not feel the booth renters are independent from the person they rent from.

LABOR AND EMPLOYMENT RELATIONS

March 26, 1987

Page 3

Senator Keating suggested House Bill 381 be amended on page 8, line 19, put the language back in that was taken out, and add for cosmetologist's services or barber's services, as defined in Section 39-51-204, (1) (1), MCA, and delete the language on page 8, lines 10 and 11.

DISPOSITION OF HOUSE BILL NO. 381: Senator Keating made a motion that the amendments be adopted. The motion carried 4-3. See attached roll call vote sheet. Senator Keating then made a motion that House Bill 381 AND AS AMENDED, BE CONCURRED IN. The motion CARRIED 5-3. See attached roll call vote sheet.

Vice-Chairman Thayer turned the chair over to Chairman Lynch.

DISPOSITION OF HOUSE BILL NO. 772: Senator Manning made a motion to adopt Rep. Brandewie's technical amendments. The motion carried unanimously.

FURTHER DISCUSSION OF HOUSE BILL NO. 772: Senator Galt suggested there be another amendment. On page 2, line 9, that \$25,000 be stricken and insert \$250,000. Senator Keating stated he feels there is a legitimate basis for that amount because since 1974 the school contracts average cost of all projects has been approximately \$600,000. Senator Keating feels the amount of \$25,000 is meaningless to the counties and school districts.

Senator Lynch said he opposes the amendment because having served as the Chairman of the Prevailing Wage Committee, the chief concerns of the school districts was the minor repairs, and they were pleased with \$7,500.

Senator Blaylock stated he is also opposed to the amendment.

DISPOSITION OF HOUSE BILL NO. 772: Senator Galt made a motion to amend House Bill 772 from \$25,000 threshold to a \$250,000 threshold. The motion FAILED due to a 4-4 tie. See attached roll call vote sheet.

Senator Manning made a motion that House Bill 772 AND AS AMENDED, BE CONCURRED IN. The motion CARRIED 5-3. See attached roll call vote sheet.

ADJOURNMENT: There being no further business to come before the committee, the hearing adjourned at 1:50 p.m.



SENATOR JOHN "J.D." LYNCH, Chairman

jr

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 3/26/87

NAME	PRESENT	ABSENT	EXCUSED
John "J.D." Lynch Chairman	X		
Gene Thayer Vice Chairman	X		
Richard Manning	X		
Thomas Keating	X		
Chet Blaylock	X		
Delwyn Gage	X		
Jack Haffey	X		
Jack Galt	X		

Each day attach to minutes.

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date March 26, 1987 Bill No. HB 772 Time 1:40 p.m.

NAME	YES	NO
John "J.D." Lynch, Chairman	X	
Gene Thayer, Vice Chairman	X	
Richard Manning	X	
Thomas Keating	X	
Chet Blaylock	X	
Delwyn Gage	X	
Jack Haffey	X	
Jack Galt	X	

Julie Rademacher
Secretary

John "J.D." Lynch
Chairman

Motion: Rep. Brandegee's technical amendments

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date March 24, 1987 Bill No. H.B. 772 Time 1:50 p.m.

NAME	YES	NO
John "J.D." Lynch, Chairman		X
Gene Thayer, Vice Chairman	X	
Richard Manning		X
Thomas Keating	X	
Chet Blaylock		X
Delwyn Gage	X	
Jack Haffey		X
Jack Galt	X	

Julie Rademacher
Secretary

John "J.D." Lynch
Chairman

Motion: Galt Amendments 4/4 Tip

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date March 26, 1987 Bill No. HB 112 Time 1:55

NAME	YES	NO
John "J.D." Lynch, Chairman	X	
Gene Thayer, Vice Chairman		X
Richard Manning	X	
Thomas Keating		X
Chet Blaylock	X	
Delwyn Gage		X
Jack Haffey	X	
Jack Galt	* X	*

Julie Rademacher
Secretary

John "J.D." Lynch
Chairman

Motion: And As Amended, Be Passed In

STANDING COMMITTEE REPORT

SENATE

March 26, 1987

Labor
HB 772
Page 2 of 8

March 26, 1987

MR. PRESIDENT

LABOR AND EMPLOYMENT RELATIONS

We, your committee on

HOUSE BILL

having had under consideration No. 772

third reading copy (blue color)

REVISE PREVAILING WAGE RATE LAWS

BRANDEWIE (BROWN)

Respectfully report as follows: That HOUSE BILL No 772 be amended as follows:

1. Title, line 4.
Following: "ACT"
Insert: "GENERALLY"
2. Title, lines 7 and 8.
Following: line 6
Strike: line 7 in its entirety through "AND " on line 8
Insert: "TO MEAN EITHER THE HEAVY HIGHWAY CONSTRUCTION WAGE RATE OR THOSE WAGES PAID IN THE PREVAILING WAGE RATE DISTRICT FOR"
Following: "CHARACTER"
Strike: ""
3. Title, line 9.
Following: "SECTIONS"
Insert: "17-5-1526, 17-5-1527, 17-6-325,"
Following: "18-2-401"
Strike: "AND 18-2-402"
Insert: "THROUGH 18-2-403, AND 90-5-114"
4. Page 1, line 14.
Strike: "heavy/highway"
Insert: "heavy highway construction"

DO PASS

DO NOT PASS

CONTINUED

Chairman

5. Page 2, line 5.
Following: line 4
Insert: "(5) For each prevailing wage rate district established under this section, the commissioner shall determine the standard prevailing rate of wages to be paid employees, as provided in 18-2-401 and 18-2-402."

6. Page 2, line 17.
Following: line 16
Insert: "(4) "District" means a prevailing wage rate district established as provided in [section 1]."
Renumber: subsequent subsections

7. Page 3, line 3.
Following: "(5) "
Strike: "Heavy/highway"
Insert: "Heavy highway construction"

8. Page 3, line 6.
Following: "for"
Insert: "heavy highway construction"

9. Page 3, lines 9 through 13.
Following: "wages"
Strike: remainder of line 9 through "performed," on line 13
Following: "" on line 13
Insert: "or "standard prevailing wage"
Following: "means" on line 13
Insert: ":

(i) the heavy highway construction wage rates applicable to heavy highway construction projects; or
(ii) "
Following: "than"
Strike: "heavy/highway"
Insert: "heavy highway construction"

10. Page 3, line 20.
Following: "."
Strike: "The"
Insert: "In each district, the"

CONTINUED

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11. Page 4, lines 13 and 14.
Following: "wages"
Strike: remainder of line 13 through "performed" on line 14
Insert: "applicable to public works contracts under this part"

12. Page 4, line 19.
Following: "rates"
Strike: "for a district"

13. Page 5, line 3.
Following: line 2
Insert: "Section 4. Section 18-2-403, MCA, is amended to read:

"18-2-403. Preference of Montana labor in public works -- wages -- federal exception. (1) In any contract let for state, county, municipal, school, or heavy highway construction, services, repair, or maintenance work under any law of this state, there shall be inserted in the bid specification and the contract a provision requiring the contractor to give preference to the employment of bona fide Montana residents in the performance of the work.

(2) All public works contracts under subsection (1), except those for heavy highway construction, must contain a provision requiring the contractor and to pay the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions, in effect and applicable to the ~~county--or--locality~~ district in which the work is being performed.

(3) In every contract for heavy highway construction, there must be inserted a provision to require the contractor to pay the heavy highway construction wage rates established statewide for such project.

~~42~~ (4) No contract may be let to any person, firm, association, or corporation refusing to execute an agreement with the above-mentioned provisions in it, provided that in contracts involving the expenditure of federal-aid funds this part may not be enforced in such

a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged veterans of the armed forces and prohibiting as unlawful any other preference or discrimination among citizens of the United States.

~~43~~ (5) Failure to include the provisions required by 18-2-422 in a public works contract relieves the contractor from his obligation to pay the standard prevailing wage rate and places such obligation on the public contracting agency."

Section 5. Section 17-5-1526, MCA, is amended to read:

"17-5-1526. Procedure prior to financing projects. (1) The board may finance projects [other than major projects] under this part only when it finds that:

(a) the financing is in the public interest and is consistent with the legislative purposes and findings set forth in 17-5-1502;

(b) the financing to be provided by the board for a project does not exceed either \$800,000 or 90% of the cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor, including but not limited to a guaranty by the board pursuant to 17-5-1519;

(e) an applicant has submitted a statement indicating any contracts to construct the projects will require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401~~44~~, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents; "substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the

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position than the qualifications held by the other persons; and

(f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance such project or projects, to create and maintain reserves therefor, and to meet all costs and expenses of issuing and servicing the bonds.

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located must be notified; and the city and county must, within 14 days after receipt of the notice, notify the board if it elects to conduct the hearing; or

(b) if no request for a local hearing is received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government must notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

(5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by the board's guarantee under 17-5-1519 or the capital reserve account authorized by 17-5-1515."

Section 6. Section 17-5-1527, MCA, is amended to read:

CONTINUED

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"17-5-1527. Procedure prior to financing major projects. (1) The board may finance major projects under this part only when it finds that:

(a) the financing is in the public interest and is consistent with legislative purposes and findings;

(b) the financing to be provided by the board for a project does not exceed either \$10 million or 90% of the cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project if the cost or appraised value is less than \$1 million, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board, provided, however, that participation by a financial institution in projects of over \$1 million is at the discretion of the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor, including but not limited to a guaranty by the board pursuant to 17-5-1519;

(e) any contracts to construct the projects require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401(4), in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents; "substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons; and

(f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance such project or projects, to create and maintain reserves therefor, and to meet all costs and expenses of issuing and servicing the bonds.

CONTINUED

March 26, 1987

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located shall be notified, and within 14 days must advise the board if it elects to conduct the hearing; or

(b) if no request for a local hearing is received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government must notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

(5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by the board's guarantee under 17-5-1519 or the capital reserve account authorized by 17-5-1515."

Section 7. Section 17-6-325, MCA, is amended to read:

"17-6-325. Preference of Montana labor. Any contract to construct a project financed pursuant to this part must require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401(4), in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents. "Substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one

CONTINUED

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person are significantly better suited for the position than the qualifications held by the other persons."

Section 8. Section 90-5-114, MCA, is amended to read:

"90-5-114. Preference of Montana labor. Any contract to construct a project financed pursuant to this part must require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401(4), in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents. "Substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons." Renumber: subsequent sections

14. Page 5, line 7.

Following: line 6

Insert: "NEW SECTION. Section 10. Coordination instruction. If Senate Bill No. 103 and this act are both passed and approved, section 1 (c) of Senate Bill No. 103 is amended so that the language referring to "the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions applicable to the county or locality in which the work is being performed" will read "the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions applicable to the public works project."

Renumber: subsequent sections

KHK
AND AS AMENDED,
BE CONCURRED IN

[Signature]
Senator Lynch, Chairman

HOUSE BILL NO. 772

INTRODUCED BY BRANDEWIE, GLASER, DRISCOLL

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE PREVAILING WAGE RATE LAWS; PROVIDING FOR THE CREATION OF PREVAILING WAGE RATE DISTRICTS; DEFINING STANDARD PREVAILING WAGE RATE AS ~~THE WEIGHTED AVERAGE WAGE RATE IN A DISTRICT;~~ DEFINING--"HEAVY/HIGHWAY WAGE RATE"--AND--" TO MEAN EITHER THE HEAVY HIGHWAY CONSTRUCTION WAGE RATE OR THOSE WAGES PAID IN THE PREVAILING WAGE RATE DISTRICT FOR WORK OF A SIMILAR CHARACTER"; AND AMENDING SECTIONS 17-5-1526, 17-5-1527, 17-6-325, 18-2-401 AND--18-2-402 THROUGH 18-2-403, AND 90-5-114, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Creation of prevailing wage rate districts. (1) Without taking into consideration heavy/highway HEAVY HIGHWAY CONSTRUCTION ~~wage~~ WAGE rates, the commissioner shall divide the state into at least 10 prevailing wage rate districts.

(2) In initially determining the districts, the commissioner must:

(a) follow the rulemaking procedures in the Montana Administrative Procedure Act; and

(b) publish the reasons supporting the creation of

each district.

(3) A district boundary may not be changed except for good cause and in accordance with the rulemaking procedures in the Montana Administrative Procedure Act.

(4) The presence of collective bargaining agreements in a particular area may not be the sole basis for the creation of boundaries of a district, nor may the absence of collective bargaining agreements in a particular area be the sole basis for changing the boundaries of a district.

(5) FOR EACH PREVAILING WAGE RATE DISTRICT ESTABLISHED UNDER THIS SECTION, THE COMMISSIONER SHALL DETERMINE THE STANDARD PREVAILING RATE OF WAGES TO BE PAID EMPLOYEES, AS PROVIDED IN 18-2-401 AND 18-2-402.

Section 2. Section 18-2-401, MCA, is amended to read:

"18-2-401. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Labor" is hereby defined to be all services in excess of \$25,000 performed in the construction, ~~repair--or~~ maintenance, or remodeling of in all state, county, municipal, and school work and does not include engineering, superintendence, management, or office or clerical work.

(2) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

(3) "Department" means the department of labor and industry provided for in 2-15-1701.

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(4) "DISTRICT" MEANS A PREVAILING WAGE RATE DISTRICT ESTABLISHED AS PROVIDED IN [SECTION 1].

~~(4)~~(5) A "bona fide resident of Montana" is hereby declared to be a person who, at the time of his employment and immediately prior thereto, has lived in this state in such a manner and for such time as is sufficient to clearly justify the conclusion that his past habitation in this state has been coupled with intention to make it his home. Sojourners or persons who come to Montana solely in pursuance of any contract or agreement to perform such labor shall under no circumstance be deemed to be bona fide residents of Montana within the meaning and for the purpose of this part.

~~(5)~~(6) "Heavy/highway HEAVY HIGHWAY CONSTRUCTION wage rates" means wage rates, INCLUDING FRINGE BENEFITS FOR HEALTH AND WELFARE AND PENSION CONTRIBUTIONS AND TRAVEL ALLOWANCE PROVISIONS, determined and established statewide for HEAVY HIGHWAY CONSTRUCTION projects such as alteration or repair of roads, streets, highways, alleys, runways, trails, parking areas, or utility rights-of-way.

~~(5)~~(6)(7) (a) "Standard prevailing rate of wages including-fringe-benefits-for-health-and-welfare-and-pension contributions-and-travel-allowance-provisions-applicable--to the--county--or--locality-district-in-which-the-work-is-being performed," OR "STANDARD PREVAILING WAGE" means:

(I) THE HEAVY HIGHWAY CONSTRUCTION WAGE RATES APPLICABLE TO HEAVY HIGHWAY CONSTRUCTION PROJECTS; OR

(II) those wages, other than ~~heavy/highway~~ HEAVY HIGHWAY CONSTRUCTION wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions, which are paid in the county--or locality district by other contractors for work of a similar character performed in that county-or-locality district by each craft, classification, or type of worker needed to complete a contract under this part. ~~The~~ IN EACH DISTRICT, THE standard prevailing rate of wages is a weighted average wage rate based on all of the hours worked on work of a similar character performed in the district.

(b) When work of a similar character is not being performed in the county-or-locality district, the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions, shall be those rates established by collective bargaining agreements in effect in the county-or locality district for each craft, classification, or type of worker needed to complete the contract.

(7) "Work of a similar character" means work on private or commercial projects as well as work on public projects."

Section 3. Section 18-2-402, MCA, is amended to read:

25

1 "18-2-402. Standard prevailing rate of wages. (1) The
 2 Montana commissioner of labor may determine the standard
 3 prevailing rate of wages ~~in-the-county-or-locality-district~~
 4 ~~in-which-the-contract-is-to-be-performed~~ APPLICABLE TO
 5 PUBLIC WORKS CONTRACTS UNDER THIS PART. The commissioner
 6 shall undertake to keep and maintain copies of collective
 7 bargaining agreements and other information ~~from-which-rates~~
 8 ~~and---jurisdictional---areas---applicable--to--public--works~~
 9 ~~contracts-under-this-part-may-be-ascertained~~ on which the
 10 rates for-a-district are based.

11 (2) The provisions of this part do not apply in those
 12 instances where the standard prevailing rate of wages is
 13 determined pursuant to federal law.

14 (3) In no instances where this part is applicable
 15 shall the standard prevailing rate of wage be determined to
 16 be greater than the applicable rate of wage in the area for
 17 the particular work in question as negotiated under existing
 18 and current collective bargaining agreements."

19 SECTION 4. SECTION 18-2-403, MCA, IS AMENDED TO READ:

20 "18-2-403. Preference of Montana labor in public works
 21 -- wages -- federal exception. (1) In any contract let for
 22 state, county, municipal, school, or heavy highway
 23 construction, services, repair, or maintenance work under
 24 any law of this state, there shall be inserted in the bid
 25 specification and the contract a provision requiring the

1 contractor to give preference to the employment of bona fide
 2 Montana residents in the performance of the work.

3 (2) All public works contracts under subsection (1),
 4 except those for heavy highway construction, must contain a
 5 provision requiring the contractor and to pay the standard
 6 prevailing rate of wages, including fringe benefits for
 7 health and welfare and pension contributions and travel
 8 allowance provisions, in effect and applicable to the county
 9 or--locality district in which the work is being performed.

10 (3) In every contract for heavy highway construction,
 11 there must be inserted a provision to require the contractor
 12 to pay the heavy highway construction wage rates established
 13 statewide for such project.

14 ~~(2)(4)~~ (4) No contract may be let to any person, firm,
 15 association, or corporation refusing to execute an agreement
 16 with the above-mentioned provisions in it, provided that in
 17 contracts involving the expenditure of federal-aid funds
 18 this part may not be enforced in such a manner as to
 19 conflict with or be contrary to the federal statutes
 20 prescribing a labor preference to honorably discharged
 21 veterans of the armed forces and prohibiting as unlawful any
 22 other preference or discrimination among citizens of the
 23 United States.

24 ~~(3)(5)~~ (5) Failure to include the provisions required by
 25 18-2-422 in a public works contract relieves the contractor

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1 from his obligation to pay the standard prevailing wage rate
2 and places such obligation on the public contracting
3 agency."

4 SECTION 5. SECTION 17-5-1526, MCA, IS AMENDED TO READ:

5 "17-5-1526. Procedure prior to financing projects. (1)
6 The board may finance projects [other than major projects]
7 under this part only when it finds that:

8 (a) the financing is in the public interest and is
9 consistent with the legislative purposes and findings set
10 forth in 17-5-1502;

11 (b) the financing to be provided by the board for a
12 project does not exceed either \$800,000 or 90% of the cost
13 or appraised value of the project, whichever is less;

14 (c) a financial institution will participate in
15 financing the project, either directly or through a letter
16 of credit, to the extent of at least 10% of the financing to
17 be provided by the board;

18 (d) the financing for the project is insured or
19 guaranteed in whole or in part by a private or governmental
20 insurer or guarantor, including but not limited to a
21 guaranty by the board pursuant to 17-5-1519;

22 (e) an applicant has submitted a statement indicating
23 any contracts to construct the projects will require all
24 contractors to give preference to the employment of bona
25 fide Montana residents, as defined in 18-2-401(4), in the

1 performance of the work on the projects if their
2 qualifications are substantially equal to those of
3 nonresidents; "substantially equal qualifications" means the
4 qualifications of two or more persons among whom the
5 employer cannot make a reasonable determination that the
6 qualifications held by one person are significantly better
7 suited for the position than the qualifications held by the
8 other persons; and

9 (f) adequate provision is made in the loan agreement,
10 lease, or other credit arrangement regarding a project or
11 projects being financed to provide for payment of debt
12 service on bonds of the board issued to finance such project
13 or projects, to create and maintain reserves therefor, and
14 to meet all costs and expenses of issuing and servicing the
15 bonds.

16 (2) In order to make the findings as described in
17 subsection (1)(a), a hearing must be conducted in the
18 following manner:

19 (a) the city or county in which the project will be
20 located must be notified; and the city and county must,
21 within 14 days after receipt of the notice, notify the board
22 if it elects to conduct the hearing; or

23 (b) if no request for a local hearing is received, the
24 board may hold the hearing at a time and place it
25 prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government must notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

(5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by the board's guarantee under 17-5-1519 or the capital reserve account authorized by 17-5-1515."

SECTION 6. SECTION 17-5-1527, MCA, IS AMENDED TO READ:

"17-5-1527. Procedure prior to financing major projects. (1) The board may finance major projects under this part only when it finds that:

(a) the financing is in the public interest and is consistent with legislative purposes and findings;

(b) the financing to be provided by the board for a project does not exceed either \$10 million or 90% of the

cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project if the cost or appraised value is less than \$1 million, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board, provided, however, that participation by a financial institution in projects of over \$1 million is at the discretion of the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor, including but not limited to a guaranty by the board pursuant to 17-5-1519;

(e) any contracts to construct the projects require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401(4), in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents; "substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons; and

(f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or

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1 projects being financed to provide for payment of debt
2 service on bonds of the board issued to finance such project
3 or projects, to create and maintain reserves therefor, and
4 to meet all costs and expenses of issuing and servicing the
5 bonds.

6 (2) In order to make the findings as described in
7 subsection (1)(a), a hearing must be conducted in the
8 following manner:

9 (a) the city or county in which the project will be
10 located shall be notified, and within 14 days must advise
11 the board if it elects to conduct the hearing; or

12 (b) if no request for a local hearing is received, the
13 board may hold the hearing at a time and place it
14 prescribes.

15 (3) If the hearing required by subsection (2) is
16 conducted by a local government, the governing body of the
17 local government must notify the board of its determination
18 of whether the project is in the public interest within 14
19 days of the completion of the public hearing.

20 (4) When a hearing is required either locally or at
21 the state level, notice must be given, at least once a week
22 for 2 weeks prior to the date set for the hearing, by
23 publication in a newspaper of general circulation in the
24 city or county where the hearing will be held. The notice
25 must include the time and place of the hearing; the general

1 nature of the project; the name of the lessee, borrower, or
2 user of the project; and the estimated cost of the project.

3 (5) The requirements of subsections (1)(b) through
4 (1)(d) do not apply to bonds that are not secured by the
5 board's guarantee under 17-5-1519 or the capital reserve
6 account authorized by 17-5-1515."

7 SECTION 7. SECTION 17-6-325, MCA, IS AMENDED TO READ:

8 "17-6-325. Preference of Montana labor. Any contract
9 to construct a project financed pursuant to this part must
10 require all contractors to give preference to the employment
11 of bona fide Montana residents, as defined in 18-2-401(4),
12 in the performance of the work on the projects if their
13 qualifications are substantially equal to those of
14 nonresidents. "Substantially equal qualifications" means the
15 qualifications of two or more persons among whom the
16 employer cannot make a reasonable determination that the
17 qualifications held by one person are significantly better
18 suited for the position than the qualifications held by the
19 other persons."

20 SECTION 8. SECTION 90-5-114, MCA, IS AMENDED TO READ:

21 "90-5-114. Preference of Montana labor. Any contract
22 to construct a project financed pursuant to this part must
23 require all contractors to give preference to the employment
24 of bona fide Montana residents, as defined in 18-2-401(4),
25 in the performance of the work on the projects if their

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1 qualifications are substantially equal to those of
 2 nonresidents. "Substantially equal qualifications" means the
 3 qualifications of two or more persons among whom the
 4 employer cannot make a reasonable determination that the
 5 qualifications held by one person are significantly better
 6 suited for the position than the qualifications held by the
 7 other persons."

8 NEW SECTION. Section 9. Codification instruction.
 9 Section 1 is intended to be codified as an integral part of
 10 Title 18, chapter 2, part 4, and the provisions of Title 18,
 11 chapter 2, part 4, apply to section 1.

12 NEW SECTION. SECTION 10. COORDINATION INSTRUCTION. IF
 13 SENATE BILL NO. 103 AND THIS ACT ARE BOTH PASSED AND
 14 APPROVED, SECTION (1)(C) OF SENATE BILL NO. 103 IS AMENDED
 15 SO THAT THE LANGUAGE REFERRING TO "THE STANDARD PREVAILING
 16 RATE OF WAGES, INCLUDING FRINGE BENEFITS FOR HEALTH AND
 17 WELFARE AND PENSION CONTRIBUTIONS AND TRAVEL ALLOWANCE
 18 PROVISIONS APPLICABLE TO THE COUNTY OR LOCALITY IN WHICH THE
 19 WORK IS BEING PERFORMED" WILL READ "THE STANDARD PREVAILING
 20 RATE OF WAGES, INCLUDING FRINGE BENEFITS FOR HEALTH AND
 21 WELFARE AND PENSION CONTRIBUTIONS AND TRAVEL ALLOWANCE
 22 PROVISIONS APPLICABLE TO THE PUBLIC WORKS PROJECT".

23 NEW SECTION. Section 11. Extension of authority. Any
 24 existing authority of the commissioner of labor and industry
 25 to make rules on the subject of the provisions of this act

1 is extended to the provisions of this act.

-End-

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